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NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

HOWARD W.C.C. TOM SUN,

Plaintiff - Appellant,

v.

CITY AND COUNTY OF HONOLULU,
Department of Enterprise Services; et al.,

Defendants - Appellees.

No. 02-16297

D.C. No. CV-00-00397-HG

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Helen Gillmor, District Judge, Presiding

Argued and Submitted November 4, 2003
Honolulu, Hawaii

Before: REINHARDT, THOMAS, and CLIFTON, Circuit Judges.

Howard W.C.C. Tom Sun appeals the district court's grant of summary judgment against him in his action against the City and County of Honolulu under 42 U.S.C. § 1983 and the Hawaii Whistleblowers' Protection Act. Because the

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

parties are familiar with the factual and procedural history of this case, we will not recount it here. We review a grant of summary judgment *de novo*. See Clicks Billiards, Inc. v. Sixshooters, Inc., 251 F.3d 1252, 1257 (9th Cir. 2001).

After the district court decided this case, we issued an opinion in Coszalter v. City of Salem, 320 F.3d 968 (9th Cir. 2003) that altered the analysis that courts must undertake in assessing whether an adverse employment action has occurred. Because the district court did not have the benefit of this case when it issued its opinion, we vacate the summary judgment order and remand for the district court's reconsideration under Coszalter. We express no opinion as to the outcome of that examination and need not, and do not, reach any other issue in this case.

REMANDED.